

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES ROBERT DRURY,

Petitioner,

v.

STATE OF MISSISSIPPI,

Respondent.

CASE NO. C15-5429 BHS

ORDER DENYING
PETITIONER'S MOTIONS FOR
EXTENSION OF TIME AND
ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation ("R&R") of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 3), and Petitioner James Drury's ("Drury") motions for extension of time (Dkts. 5, 6).

On June 24, 2015, Drury filed an application for leave to proceed *in forma pauperis* and a petition for writ of habeas corpus. Dkt. 1. Drury is not in custody. *See* Dkt. 1-1 at 2; Dkt. 6. On July 1, 2015, Judge Strombom issued the R&R recommending that the Court deny Drury's habeas petition with prejudice because the Court lacks subject matter jurisdiction. Dkt. 3. On July 24 and August 10, 2015, Drury filed the instant motions requesting additional time to file objections to the R&R. Dkts. 5, 6.

1 A habeas petitioner must be in custody at the time the petition is filed in order to
2 challenge the basis of his detention. 28 U.S.C. § 2254(a); *Maleng v. Cook*, 490 U.S. 488,
3 490–91 (1989). Because Drury is not in custody and has not been convicted under the
4 warrant he seeks to challenge, the Court lacks subject matter jurisdiction over Drury's
5 habeas petition. Any objections raised by Drury would not confer subject matter
6 jurisdiction on the Court.

7 Therefore, the Court having considered the R&R, Drury's motions, and the
8 remaining record, does hereby find and order as follows:

- 9 (1) Drury's motions for extension of time (Dkts. 5, 6) are **DENIED**;
10 (2) The R&R is **ADOPTED**;
11 (3) Drury's application to proceed *in forma pauperis* is **DENIED**;
12 (4) Drury's petition is **DISMISSED with prejudice**;
13 (5) The certificate of appealability is **DENIED**.

14 Dated this 10th day of August, 2015.

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17 BENJAMIN H. SETTLE
United States District Judge
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